



House of Representatives

General Assembly

File No. 495

February Session, 2016

Substitute House Bill No. 5542

House of Representatives, April 6, 2016

The Committee on Public Health reported through REP. RITTER of the 1st Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S
RECOMMENDATIONS CONCERNING THE PREVENTION OF
SMOKING AND TOBACCO USE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 19a-342 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2016*):

3 (a) As used in this section, "smoke" or "smoking" means the lighting
4 or carrying of a lighted cigarette, cigar, pipe or similar device.

5 (b) (1) Notwithstanding the provisions of section 31-40q, as
6 amended by this act, no person shall smoke: (A) In any building or
7 portion of a building owned and operated or leased and operated by
8 the state or any political subdivision thereof; (B) in any area of a health
9 care institution; (C) in any area of a retail food store; (D) in any
10 restaurant; (E) in any area of an establishment with a permit issued for
11 the sale of alcoholic liquor pursuant to section 30-20a, 30-21, 30-21b, 30-
12 22, 30-22c, 30-28, 30-28a, 30-33a, 30-33b, 30-35a, 30-37a, 30-37e or 30-37f,

13 in any area of an establishment with a permit for the sale of alcoholic
14 liquor pursuant to section 30-23 issued after May 1, 2003, and, on and
15 after April 1, 2004, in any area of an establishment with a permit issued
16 for the sale of alcoholic liquor pursuant to section 30-22a or 30-26 or
17 the bar area of a bowling establishment holding a permit pursuant to
18 subsection (a) of section 30-37c; (F) [within] in any area of a school
19 building; [while school is in session or student activities are being
20 conducted;] (G) in any passenger elevator, provided no person shall be
21 arrested for violating this subsection unless there is posted in such
22 elevator a sign which indicates that smoking is prohibited by state law;
23 (H) in any dormitory in any public or private institution of higher
24 education; or (I) on and after April 1, 2004, in any area of a dog race
25 track or a facility equipped with screens for the simulcasting of off-
26 track betting race programs or jai alai games. For purposes of this
27 subsection, "restaurant" means space, in a suitable and permanent
28 building, kept, used, maintained, advertised and held out to the public
29 to be a place where meals are regularly served to the public.

30 (2) [This] Subdivision (1) of this section shall not apply to the
31 following establishments: (A) Any correctional [facilities] facility; (B)
32 any designated smoking [areas] area in a psychiatric [facilities] facility;
33 (C) any public housing [projects] project, as defined in subsection (b) of
34 section 21a-278a; (D) [classrooms] any classroom where demonstration
35 smoking is taking place as part of a medical or scientific experiment or
36 lesson; (E) any medical research site where smoking is integral to the
37 research being conducted; (F) any smoking [rooms] room provided by
38 employers for employees, pursuant to section 31-40q, as amended by
39 this act; ~~[(F)]~~ (G) notwithstanding the provisions of subparagraph (E)
40 of subdivision (1) of this subsection, the outdoor portion of the
41 premises of any permittee listed in subparagraph (E) of subdivision (1)
42 of this subsection, provided, in the case of any seating area maintained
43 for the service of food, at least seventy-five per cent of the outdoor
44 seating capacity is an area in which smoking is prohibited and which is
45 clearly designated with written signage as a nonsmoking area, except
46 that any temporary seating area established for special events and not
47 used on a regular basis shall not be subject to the smoking prohibition

48 or signage requirements of this subparagraph; or ~~[(G)]~~ (H) any tobacco
49 bar, provided no tobacco bar shall expand in size or change its location
50 from its size or location as of December 31, 2002. For purposes of this
51 subdivision, "outdoor" means an area which has no roof or other
52 ceiling enclosure, "tobacco bar" means an establishment with a permit
53 for the sale of alcoholic liquor to consumers issued pursuant to chapter
54 545 that, in the calendar year ending December 31, 2002, generated ten
55 per cent or more of its total annual gross income from the on-site sale
56 of tobacco products and the rental of on-site humidors, and "tobacco
57 product" means any substance that contains tobacco, including, but not
58 limited to, cigarettes, cigars, pipe tobacco or chewing tobacco.

59 (c) The operator of a hotel, motel or similar lodging may allow
60 guests to smoke or use an electronic nicotine delivery system or vapor
61 product, as defined in section 19a-342a, as amended by this act, in not
62 more than twenty-five per cent of the rooms offered as
63 accommodations to guests.

64 (d) In each room, elevator, area or building in which smoking is
65 prohibited by this section, the person in control of the premises shall
66 post or cause to be posted in a conspicuous place signs stating that
67 smoking is prohibited by state law. Such signs, except in elevators,
68 restaurants, establishments with permits to sell alcoholic liquor to
69 consumers issued pursuant to chapter 545, hotels, motels or similar
70 lodgings, and health care institutions, shall have letters at least four
71 inches high with the principal strokes of letters not less than one-half
72 inch wide. Nothing in this subsection shall be construed to require the
73 person in control of a building to post such signs in every room of a
74 building, provided such signs are posted in a conspicuous place in
75 such building.

76 (e) Any person found guilty of smoking in violation of this section,
77 failure to post signs as required by this section or the unauthorized
78 removal of such signs shall have committed an infraction.

79 (f) Nothing in this section shall be construed to require any smoking
80 area [in] inside or outside any building or the entryway to any

81 building.

82 [(g) The provisions of this section shall supersede and preempt the
83 provisions of any municipal law or ordinance relative to smoking
84 effective prior to, on or after October 1, 1993.]

85 Sec. 2. Subdivision (4) of subsection (a) of section 31-40q of the
86 general statutes is repealed and the following is substituted in lieu
87 thereof (*Effective October 1, 2016*):

88 (4) "Business facility" means a structurally enclosed location or
89 portion thereof at which employees perform services for their
90 employer. The term "business facility" does not include: (A) Facilities
91 listed in subparagraph (A), (C) or (G) of subdivision (2) of subsection
92 (b) of section 19a-342, as amended by this act, or subparagraph (A), (C)
93 or (I) of subdivision (2) of subsection (b) of section 19a-342a, as
94 amended by this act; (B) any establishment with a permit for the sale of
95 alcoholic liquor pursuant to section 30-23 issued on or before May 1,
96 2003; (C) for any business that is engaged in the testing or
97 development of tobacco or tobacco products, the areas of such business
98 designated for such testing or development; or (D) during the period
99 from October 1, 2003, to April 1, 2004, establishments with a permit
100 issued for the sale of alcoholic liquor pursuant to section 30-22a or 30-
101 26 or the bar area of a bowling establishment holding a permit
102 pursuant to subsection (a) of section 30-37c.

103 Sec. 3. Subsection (d) of section 31-40q of the general statutes is
104 repealed and the following is substituted in lieu thereof (*Effective*
105 *October 1, 2016*):

106 (d) Nothing in this section may be construed to prohibit an
107 employer from designating an entire business facility and the real
108 property on which such business facility is located as a nonsmoking
109 area.

110 Sec. 4. Subsection (b) of section 53-344 of the general statutes is
111 repealed and the following is substituted in lieu thereof (*Effective*

112 October 1, 2016):

113 (b) Any person who sells, gives or delivers to any [minor] person
114 under eighteen years of age tobacco [, unless the minor is delivering or
115 accepting delivery in such person's capacity as an employee,] in any
116 form shall be fined not more than two hundred dollars for the first
117 offense, not more than three hundred fifty dollars for a second offense
118 within an eighteen-month period and not more than five hundred
119 dollars for each subsequent offense within an eighteen-month period.
120 The provisions of this subsection shall not apply to a person under
121 eighteen years of age who is delivering or accepting delivery (1) in
122 such person's capacity as an employee, or (2) as part of a scientific
123 study being conducted in an institution of higher education for the
124 purpose of medical research to further efforts in tobacco use
125 prevention and cessation, provided such medical research has been
126 approved by the institution's independent review board.

127 Sec. 5. Subsection (b) of section 53-344b of the 2016 supplement to
128 the general statutes is repealed and the following is substituted in lieu
129 thereof (*Effective October 1, 2016*):

130 (b) Any person who sells, gives or delivers to any [minor] person
131 under eighteen years of age an electronic nicotine delivery system or
132 vapor product [, unless the minor is delivering or accepting delivery in
133 such person's capacity as an employee,] in any form shall be fined not
134 more than two hundred dollars for the first offense, not more than
135 three hundred fifty dollars for a second offense within an eighteen-
136 month period and not more than five hundred dollars for each
137 subsequent offense within an eighteen-month period. The provisions
138 of this subsection shall not apply to a person under eighteen years of
139 age who is delivering or accepting delivery (1) in such person's
140 capacity as an employee, or (2) as part of a scientific study being
141 conducted in an institution of higher education for the purpose of
142 medical research to further efforts in tobacco use prevention and
143 cessation, provided such medical research has been approved by the
144 institution's independent review board.

145 Sec. 6. Section 19a-342a of the 2016 supplement to the general
146 statutes is repealed and the following is substituted in lieu thereof
147 (*Effective October 1, 2016*):

148 (a) As used in this section and section 2 of public act 15-206:

149 (1) "Child care facility" means a provider of child care services as
150 defined in section 19a-77, or a person or entity required to be licensed
151 under section 17a-145;

152 (2) "Electronic nicotine delivery system" means an electronic device
153 that may be used to simulate smoking in the delivery of nicotine or
154 other substances to a person inhaling from the device, and includes,
155 but is not limited to, an electronic cigarette, electronic cigar, electronic
156 cigarillo, electronic pipe or electronic hookah and any related device
157 and any cartridge or other component of such device;

158 (3) "Liquid nicotine container" means a container that holds a liquid
159 substance containing nicotine that is sold, marketed or intended for
160 use in an electronic nicotine delivery system or vapor product, except
161 "liquid nicotine container" does not include such a container that is
162 prefilled and sealed by the manufacturer and not intended to be
163 opened by the consumer; and

164 (4) "Vapor product" means any product that employs a heating
165 element, power source, electronic circuit or other electronic, chemical
166 or mechanical means, regardless of shape or size, to produce a vapor
167 that may or may not include nicotine, that is inhaled by the user of
168 such product, but shall not include a medicinal or therapeutic product
169 used by a (A) licensed health care provider to treat a patient in a health
170 care setting, or (B) patient, as prescribed or directed by a licensed
171 health care provider, in any setting.

172 (b) (1) No person shall use an electronic nicotine delivery system or
173 vapor product: (A) In any building or portion of a building owned and
174 operated or leased and operated by the state or any political
175 subdivision thereof; (B) in any area of a health care institution; (C) in

176 any area of a retail food store; (D) in any restaurant; (E) in any area of
177 an establishment with a permit issued for the sale of alcoholic liquor
178 pursuant to section 30-20a, 30-21, 30-21b, 30-22, 30-22a, 30-22c, 30-26,
179 30-28, 30-28a, 30-33a, 30-33b, 30-35a, 30-37a, 30-37e or 30-37f, in any
180 area of establishment with a permit issued for the sale of alcoholic
181 liquor pursuant to section 30-23 issued after May 1, 2003, or the bar
182 area of a bowling establishment holding a permit pursuant to
183 subsection (a) of section 30-37c; (F) [within] in any area of a school
184 building; [while school is in session or student activities are being
185 conducted;] (G) within a child care facility, except, if the child care
186 facility is a family child care home as defined in section 19a-77, such
187 use is prohibited only when a child enrolled in such home is present;
188 (H) in any passenger elevator, provided no person shall be arrested for
189 violating this subsection unless there is posted in such elevator a sign
190 which indicates that such use is prohibited by state law; (I) in any
191 dormitory in any public or private institution of higher education; or
192 (J) in any area of a dog race track or a facility equipped with screens for
193 the simulcasting of off-track betting race programs or jai alai games.
194 For purposes of this subsection, "restaurant" means space, in a suitable
195 and permanent building, kept, used, maintained, advertised and held
196 out to the public to be a place where meals are regularly served to the
197 public.

198 (2) This section shall not apply to the following establishments: (A)
199 Any correctional [facilities] facility; (B) any designated smoking [areas]
200 area in a psychiatric [facilities] facility; (C) any public housing
201 [projects] project, as defined in subsection (b) of section 21a-278a; (D)
202 [classrooms] any classroom where a demonstration of the use of an
203 electronic nicotine delivery system or vapor product is taking place as
204 part of a medical or scientific experiment or lesson; (E)
205 [establishments] any medical research site where the use of an
206 electronic nicotine delivery system or vapor product is integral to the
207 research being conducted; (F) any establishment without a permit for
208 the sale of alcoholic liquor that sell electronic nicotine delivery
209 systems, vapor products or liquid nicotine containers on-site and allow
210 their customers to use such systems, products or containers on-site;

211 [(F)] (G) any smoking [rooms] room provided by employers for
212 employees, pursuant to section 31-40q, as amended by this act; [(G)]
213 (H) notwithstanding the provisions of subparagraph (E) of subdivision
214 (1) of this subsection, the outdoor portion of the premises of any
215 permittee listed in subparagraph (E) of subdivision (1) of this
216 subsection, provided, in the case of any seating area maintained for the
217 service of food, at least seventy-five per cent of the outdoor seating
218 capacity is an area in which smoking is prohibited and which is clearly
219 designated with written signage as a nonsmoking area, except that any
220 temporary seating area established for special events and not used on a
221 regular basis shall not be subject to the prohibition on the use of an
222 electronic nicotine delivery system or vapor product or the signage
223 requirements of this subparagraph; or [(H)] (I) any tobacco bar,
224 provided no tobacco bar shall expand in size or change its location
225 from its size or location as of October 1, 2015. For purposes of this
226 subdivision, "outdoor" means an area which has no roof or other
227 ceiling enclosure, "tobacco bar" means an establishment with a permit
228 for the sale of alcoholic liquor to consumers issued pursuant to chapter
229 545 that, in the calendar year ending December 31, 2015, generated ten
230 per cent or more of its total annual gross income from the on-site sale
231 of tobacco products and the rental of on-site humidors, and "tobacco
232 product" means any substance that contains tobacco, including, but not
233 limited to, cigarettes, cigars, pipe tobacco or chewing tobacco.

234 (c) The operator of a hotel, motel or similar lodging may allow
235 guests to use an electronic nicotine delivery system or vapor product
236 or smoke, as defined in section 19a-342, as amended by this act, in not
237 more than twenty-five per cent of the rooms offered as
238 accommodations to guests.

239 (d) In each room, elevator, area or building in which the use of an
240 electronic nicotine delivery system or vapor product is prohibited by
241 this section, the person in control of the premises shall post or cause to
242 be posted in a conspicuous place signs stating that such use is
243 prohibited by state law. Such signs, except in elevators, restaurants,
244 establishments with permits to sell alcoholic liquor to consumers

245 issued pursuant to chapter 545, hotels, motels or similar lodgings, and
 246 health care institutions, shall have letters at least four inches high with
 247 the principal strokes of letters not less than one-half inch wide.
 248 Nothing in this subsection shall be construed to require the person in
 249 control of a building to post such signs in every room of a building,
 250 provided such signs are posted in a conspicuous place in such
 251 building.

252 (e) Any person found guilty of using an electronic nicotine delivery
 253 system or vapor product in violation of this section, failure to post
 254 signs as required by this section or the unauthorized removal of such
 255 signs shall have committed an infraction.

256 (f) Nothing in this section shall be construed to require the
 257 designation of any area for the use of electronic nicotine delivery
 258 system or vapor product [in] inside or outside any building or the
 259 entryway to any building.

260 [(g) The provisions of this section shall supersede and preempt the
 261 provisions of any municipal law or ordinance relative to the use of an
 262 electronic nicotine delivery system or vapor product effective prior to,
 263 on or after October 1, 2015.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2016	19a-342
Sec. 2	October 1, 2016	31-40q(a)(4)
Sec. 3	October 1, 2016	31-40q(d)
Sec. 4	October 1, 2016	53-344(b)
Sec. 5	October 1, 2016	53-344b(b)
Sec. 6	October 1, 2016	19a-342a

Statement of Legislative Commissioners:

In Section 2(a)(4)(A) the brackets around "or" were deleted, "or (H)" was deleted and "subparagraph (A), (C) or (I) of subdivision (2) of subsection (b) of" was inserted before "section" for accuracy.

PH *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note**State Impact:**

Agency Affected	Fund-Effect	FY 17 \$	FY 18 \$
Resources of the General Fund	GF - Potential Revenue Gain	See Below	See Below

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill, which expands the restrictions on smoking and the use of e-cigarettes, results in a potential General Fund revenue gain from infraction fines. In FY 15, there were seven offenses that resulted in infraction revenue of \$485.

The bill makes additional technical and conforming changes that do not result in a fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of infractions.

Sources: Judicial Department Offenses and Revenue Database

OLR Bill Analysis**sHB 5542*****AN ACT CONCERNING THE DEPARTMENT OF PUBLIC HEALTH'S RECOMMENDATIONS CONCERNING THE PREVENTION OF SMOKING AND TOBACCO USE.*****SUMMARY:**

This bill modifies restrictions on smoking and e-cigarettes (i.e., electronic nicotine delivery systems and vapor products) in certain establishments and public areas. It also excludes certain medicinal and therapeutic products used by health care providers and patients from the statutes pertaining to vapor products.

Among other things, the bill:

1. prohibits smoking and the use of e-cigarettes in any area of a school building, instead of within a school building, as under current law (§§ 1 & 6);
2. exempts from the prohibition on smoking and e-cigarette use medical research sites where it is integral to the research being conducted (§§ 1 & 6);
3. clarifies that hotel and motel operators may allow guests to smoke or use e-cigarettes in up to 25% of rooms (§§ 1 & 6);
4. modifies the requirements for posting signs in buildings where smoking and e-cigarette use are prohibited (§§ 1 & 6);
5. specifies that the law does not require the designation of an area inside, outside, or within the entryway of a building for smoking or e-cigarette use (§§ 1 & 6);
6. specifies that an employer may designate an entire business facility, including the real property on which it is located, as a

nonsmoking area (§§ 2 & 3); and

7. exempts from fines, a person who sells or delivers tobacco or e-cigarettes to a minor who receives or delivers it as part of certain related medical research (§§ 4 & 5).

Additionally, the bill eliminates the provisions in current law under which the state's smoking and e-cigarette laws supersede and preempt related municipal laws or ordinances.

The bill also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2016

SMOKING AND E-CIGARETTE USE IN CERTAIN ESTABLISHMENTS AND PUBLIC AREAS

Prohibited Locations

Current law prohibits smoking and e-cigarette use within a school building while school is in session or during student activities. The bill instead applies the prohibition to any area of a school building. Existing law, unchanged by the bill, also prohibits smoking and e-cigarette use in various locations, such as restaurants, health care institutions, and state buildings (see BACKGROUND).

Exceptions

Under the bill, the prohibition on smoking and e-cigarette use does not apply to medical research sites where smoking is integral to the research being conducted. Existing law also exempts various locations from the prohibition, such as correctional facilities and public housing projects (see BACKGROUND).

Additionally, current law permits hotel, motel, or other similar lodging operators to allow guests to smoke or use e-cigarettes in up to 25% of rooms offered as guest accommodations. Under the bill, the 25% limit applies to the combination of both smoking and e-cigarette use.

Signage

The law requires the person in control of any building in which smoking and e-cigarette use is prohibited by state law to post or have someone post a sign stating the prohibition. The bill specifies that signs are not required to be posted in each room of a building, provided the signs are posted in a conspicuous place.

Penalties

The bill exempts from fines (see BACKGROUND) those who sell, give, or deliver tobacco or e-cigarettes to a person under age 18 as part of a scientific study that is:

1. conducted at a higher education institution,
2. for medical research purposes to further efforts in tobacco and e-cigarette use prevention and cessation, and
3. approved by the institution's independent review board.

The law already exempts anyone who sells, gives, or delivers tobacco or e-cigarettes to a person under age 18 who receives or delivers it as an employee.

VAPOR PRODUCTS

The bill exempts from the statutory definition of "vapor product" a medicinal or therapeutic product used by a (1) licensed health care provider to treat a patient in a health care setting or (2) patient in any setting, as prescribed or directed by a licensed health care provider.

Under existing law, a vapor product uses a heating element; power source; electronic circuit; or other electronic, chemical, or mechanical means, regardless of shape or size, to produce a vapor the user inhales. The vapor may or may not include nicotine.

BACKGROUND***Locations Where Smoking and E-Cigarettes Are Prohibited***

Existing law prohibits smoking and e-cigarette use in the following locations:

1. buildings owned or leased and operated by the state or its political subdivisions,
2. health care institutions,
3. retail food stores,
4. restaurants,
5. places that serve alcohol under specified permits,
6. specified child care facilities,
7. passenger elevators,
8. dormitories at public or private higher education institutions, and
9. dog race tracks or facilities equipped with screens for simulcasting off-track betting racing programs or jai alai games.

Exceptions to Smoking and E-Cigarette Prohibition

The law exempts from the prohibition on smoking and e-cigarette use:

1. correctional facilities;
2. designated smoking areas in psychiatric facilities;
3. public housing projects;
4. classrooms, during smoking or e-cigarette demonstrations that are part of a medical or scientific experiment or lesson;
5. smoking rooms provided by employers for employees;
6. outdoor portions of places serving alcohol, under certain circumstances; and
7. tobacco bars, provided they do not expand or change their

location as of October 1, 2015.

Fines for Selling Tobacco or E-Cigarettes to Minors

Existing law subjects anyone who sells, gives, or delivers tobacco or e-cigarettes to a minor to a maximum fine of:

1. \$200 for a first offense;
2. \$350 for a second offense committed within 18 months of the first offense, and
3. \$500 for each subsequent offense committed within 18 months.

COMMITTEE ACTION

Public Health Committee

Joint Favorable Substitute

Yea 28 Nay 0 (03/21/2016)